



(2)  
No. 86-1643

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IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1986

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THE STATE OF MISSISSIPPI,

Petitioner

v.

DONNIE WAYNE FLOYD,

Respondent

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BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF MISSISSIPPI

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QUESTION PRESENTED FOR REVIEW

Did the court below err in concluding, based on the specific facts in the case, that the investigative stop of the defendant was so intrusive as to become an arrest when the defendant was handcuffed and placed in a police car?

## TABLE OF CONTENTS

	<u>Page</u>
Question Presented . . . . .	i
Table of Contents . . . . .	ii
Table of Authorities . . . . .	iii
Statement of the Case . . . . .	1
Summary of the Argument . . . . .	3
Argument	
I.    THE RULING BELOW WAS FULLY CONSISTENT WITH THE PRIOR DECISIONS OF THIS COURT AND WAS CORRECTLY DECIDED . . . .	4
II.   THE DECISION OF THE MISSISSIPPI SUPREME COURT WAS NOT IN CONFLICT WITH DECISIONS OF OTHER STATE COURTS OR FEDERAL COURTS OF APPEALS . . . . .	12
Conclusion . . . . .	20

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Dunaway v. New York</u> , 442 U.S. 200 (1979) . . . .	8
<u>Farrow v. State</u> , 68 Md. App. 519, 514 A.2d 35 (1986) . . . . .	18
<u>Florida v. Royer</u> , 460 U.S. 491 (1983) . . . .	6, 7
<u>Floyd v. State of Mississippi</u> , 500 So. 2d 989 (Miss. 1986) . . . . .	6
<u>Howard v. State</u> , 664 P.2d 603 (Alaska App. 1983) . . . . .	17
<u>McCrary v. State</u> , 486 So. 2d 1247 (Miss. 1986) . . . . .	6
<u>People v. Brown</u> , 169 Cal. App. 3d 159, 215 Cal. Rptr. 101 (1985) . . . . .	18
<u>People v. Weeams</u> , 665 P.2d 619 (Colo. 1983) . . . . .	16, 17
<u>State v. Aguirre</u> , 130 Ariz. App. 54, 633 P.2d 1047 (1981) . . . . .	17
<u>State v. Goodson</u> , 444 So. 2d 1337 (La. Ct. App. 1984) . . . . .	18
<u>State v. Wakely</u> , 29 Wash. App. 238, 628 P.2d 835 (1981) . . . . .	18
<u>Terry v. Ohio</u> , 392 U.S. 1 (1968) . . . . .	7, 8

# TABLE OF AUTHORITIES (Cont.)

<u>Cases</u>	<u>Page</u>
<u>Tillman v. State</u> , 275 Ark. 275, 630 S.W.2d 5 (1982), <u>cert. denied</u> , 459 U.S. 1201 (1983) . . . . .	17
<u>United States v. Bautista</u> , 684 F.2d 1286 (9th Cir. 1982), <u>cert.</u> <u>denied</u> , 459 U.S. 1211 (1983) . . . . .	13
<u>United States v. Cortez</u> , 449 U.S. 411 (1981) . . . . .	6
<u>United States v. Hensley</u> , 469 U.S. 221 (1985) . . . . .	6, 11
<u>United States v. Kapperman</u> , 764 F.2d 786 (11th Cir. 1985) . . . . .	14-16
<u>United States v. Place</u> , 462 U.S. 696 (1983) . . . . .	8
<u>United States v. Sharpe</u> , 470 U.S. 675 (1985) . . . . .	5, 8

### STATEMENT OF THE CASE

The Respondent generally accepts the Petitioner's statement of the case, with the exception of several crucial facts which the Petitioner omitted. The facts demonstrate that Donnie Wayne Floyd drove his car through a roadblock in Corinth, Mississippi, at about 7:30 p.m. on July 13, 1982 after first stopping about 100 yards before the roadblock. Floyd's Oldsmobile aroused no suspicion in the four police officers who manned the roadblock despite the fact that they had seen him stop prior to the roadblock, and Floyd possessed a valid driver's license and registration. However, the car of Bruce Allen Boches, with whom Floyd apparently had been traveling, was stopped by police when it turned and headed away from the roadblock. Because Boches's car had a substitute Mississippi tag and Boches did not have the car registration, the

police suspected that the car was stolen. They then impounded the car and took Boches to the Alcorn County jail. Boches told the police that Floyd was the driver of the Oldsmobile, and the police radioed the district headquarters to put out a bulletin which contained a description of the Oldsmobile and the driver, and a request that the car be stopped and the driver held.

At about 9:00 p.m., Trooper Maurice Graddy spotted Floyd's car and pulled it over. When stopped, Floyd responded to the officer's questions courteously and cooperatively. Graddy then ordered Floyd to sit in the patrol car and informed headquarters that Floyd was in custody. Headquarters replied that Graddy should "be careful," at which point he handcuffed Floyd's arms behind his back. Graddy later testified that he had no idea why he had been ordered to stop Floyd, and had no reason to believe that Floyd

was dangerous other than having been told to be careful.

About ten minutes later, backup officers arrived and Floyd's car was immediately searched as one of the troopers opened the trunk and discovered three bales of what appeared to be marijuana. The Oldsmobile was driven to the Alcorn County jail, where it was fully searched at about the same time as Boches's car, which was being searched for the first time pursuant to a search warrant. Marijuana was found in Boches's car, and 1.2 grams of cocaine was discovered in Floyd's car, in addition to the marijuana.

#### SUMMARY OF ARGUMENT

The Supreme Court of Mississippi ruled below that because of the particular circumstances in this case, the handcuffing and detaining in a police car of the Respondent Donnie Wayne Floyd

turned an investigative stop into an arrest. Contrary to the assertions of the Petitioner, the court did not rule that the handcuffing of a suspect automatically transforms an investigatory stop into a de facto arrest. Thus, the decision below was correctly decided and is fully consistent both with the holdings of this Court and with decisions of federal courts of appeals and state courts which have considered similar issues. Therefore, there is no reason for this Court to accept this case for decision.

#### ARGUMENT

- I. THE RULING BELOW WAS FULLY CONSISTENT WITH THE PRIOR DECISIONS OF THIS COURT AND WAS CORRECTLY DECIDED.

In an attempt to create the impression that the ruling of the Mississippi Supreme Court is in conflict with the decisions of this Court, and



with decisions of other state and lower federal courts, the Petitioner has consistently mischaracterized the nature of the court's holding. While the decision of the court is not as fully elaborated as it might be, it is clear that the court did not, as the Petitioner claims, adopt a per se rule that handcuffing an individual during an investigative stop turns the stop into a de facto arrest. Therefore, the Petitioner's statement of the questions presented for review is misleading, and its argument is based on a distortion of the actual decision rendered below.

A careful reading of the decision of the Mississippi Supreme Court reveals no hint of a per se rule regarding handcuffing during an investigatory stop. Instead, the court's opinion simply traces this Court's recent rulings regarding the nature and scope of an investigative stop, citing United States v. Sharpe, 470 U.S.

675 (1985); United States v. Hensley, 469 U.S. 221 (1985); Florida v. Royer, 460 U.S. 491 (1983), and United States v. Cortez, 449 U.S. 411 (1981), and utilizes the balancing approach adopted by this Court in those and other cases.

Relying on its prior decision in McCrary v. State, 486 So. 2d 1247, 1249-50 (Miss. 1986), the Mississippi Supreme Court stated below that "[a]n investigative stop must be limited in scope.

. . . 'Where a detention. . . exceeds the scope of an investigative stop, it approaches a seizure'" which must be justified by probable cause. Floyd v. State of Mississippi, 500 So. 2d 989, 992 (Miss. 1986). For this reasoning, the court in McCrary relied on this Court's ruling in Florida v. Royer, supra, that when a detention becomes "a more serious intrusion on . . . personal liberty than is allowable on mere suspicion of criminal activity," the detention exceeds the

scope of an investigative stop and becomes an arrest. 486 So. 2d at 1249 (quoting 460 U.S. at 502). The court below also cited Florida v. Royer for this purpose as it concluded that the placing of Floyd in the patrol car with his hands handcuffed behind his back was, under the circumstances, such a serious intrusion on personal liberty as to go beyond the dividing line between detention and arrest. 500 So. 2d at 992. In fact, the court specifically avoided the adoption of any per se rules regarding when an investigative stop becomes an arrest, stating that because of the extreme facts in the case "[w]e need not delineate our view of the dividing line between detention and arrest. . . ." Id.

This approach is clearly consistent with the prior decisions of this Court. In Terry v. Ohio, 392 U.S. 1, 27 (1968), the Court recognized a "narrowly drawn" exception to the probable cause

requirement for certain seizures of the person which do not rise to the level of full arrests. A legitimate Terry stop was said to involve a "wholly different kind of intrusion upon individual freedom" than a traditional arrest. Id. at 26. Subsequently, in Dunaway v. New York, 442 U.S. 200, 210 (1979), the Court noted that Terry "defined a special category of Fourth Amendment 'seizures' so substantially less intrusive than arrests that the general rule requiring probable cause to make Fourth Amendment 'seizures' reasonable could be replaced by a balancing test." (Emphasis added.) Similarly, in United States v. Place, 462 U.S. 696, 703 (1983), the Court stated that "[w]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." (Emphasis added.) See also United

States v. Sharpe, supra, 470 U.S. at 685 (in determining whether detention was investigative stop or arrest, court should balance interests employing "common sense and ordinary human experience").

In the decision below, the court simply analyzed the facts before it and concluded that the extreme nature of the intrusion on Floyd's fourth amendment interests and his personal liberty--having his hands handcuffed behind his back and being detained in a patrol car--was not outweighed by any sufficient governmental interest in crime detection or prevention. Although the Petitioner understandably minimizes the fact, the only facts actually known to the police at the time Floyd was stopped was that he had cleared a roadblock manned by four troopers without arousing any suspicion, but that an individual named Boches, with whom he had been

traveling in tandem, was being held because of a lack of a valid registration for the car he was driving. Additionally, the police testified at trial that they had smelled the odor of marijuana about Boches's car. Contrary to the Petitioner's version of the facts (Petition at 15), at the time of Floyd's detention the police did not know that Boches was transporting a sizable quantity of marijuana, for the search of Boches car took place long after Floyd had been stopped and handcuffed. At best, the police at headquarters believed that Boches was in possession of an automobile without proper identification and that the car smelled like it contained an indeterminate amount of marijuana.

This information can scarcely be considered sufficient to justify the extreme nature of Floyd's detention. Nor can the Petitioner add support to its argument by claiming that Trooper

Graddy found justification for handcuffing Floyd in the directions from headquarters to "be careful," for those at headquarters could not have utilized such extreme measures had they stopped Floyd themselves. See United States v. Hensley, supra, 469 U.S. at 233 (investigative stop on basis of flyer or bulletin valid if the stop was not more intrusive than would have been permitted by the department issuing the flyer or bulletin).

The Petitioner attempts to read major significance into the fact that the court below stated at one point that Floyd could not reasonably have believed that he was free to go when he was handcuffed and placed in the police car. Clearly, the court's decision regarding the extent and intrusive nature of the investigative stop did not rest on the subjective belief of Floyd, and the Petitioner's attempt to transform this into a basis for the court's opinion--and an

issue on appeal--is misplaced.

In short, the information available to Trooper Graddy and the other troopers at the time of Floyd's stop, handcuffing, and detention in the police car did not support the intrusive nature of the stop, and thus utilizing the balancing approach adopted by this Court, it is clear that the Mississippi Supreme Court was correct in deciding that the stop of Floyd had exceeded the bounds of a permissible investigative stop.

II. THE DECISION OF THE MISSISSIPPI SUPREME COURT WAS NOT IN CONFLICT WITH DECISIONS OF OTHER STATE COURTS OR FEDERAL COURTS OF APPEALS.

As noted in the previous section of this Brief, the Mississippi Supreme Court did not adopt a per se rule that an individual is arrested when handcuffed, but rather utilized a



balancing test to determine that in the present circumstances, the extremely intrusive nature of Floyd's detention was not justified by the information available to the officers at the time of his stop. Thus, the court's decision was clearly in accord with the decisions on this issue from other jurisdictions, including the cases claimed by the Petitioner to be in conflict.

For example, United States v. Bautista, 684 F.2d 1286 (9th Cir. 1982), cert. denied, 459 U.S. 1211 (1983), cited by the Petitioner as being in conflict with the decision below, can easily be seen as being in accord with the Mississippi Supreme Court's analysis. The Ninth Circuit determined in Bautista that the use of handcuffs in an investigative stop was permissible because of the particular circumstances of the case. The facts showed that the defendants were stopped and handcuffed because they matched perfectly the

description of two individuals who had moments before committed an armed bank robbery. The two suspects were handcuffed not only because of the nature of the criminal activity involved, the obvious potential for danger, and the fact that one suspect appeared to be ready to flee, but also because they were left with one police officer while the other officer investigated the suspects' story as to what they had just been doing. These factors, which all combined to justify the handcuffing, were not present in the present case, so it is not surprising that the Mississippi Supreme Court reached a different conclusion as to the propriety of the handcuffing in this case.

Similarly, an examination of United States v. Kapperman, 764 F.2d 786 (11th Cir. 1985), also cited by the Petitioner, reveals that it is totally consistent with the decision below. In

Kapperman, the defendant was stopped, handcuffed, and placed in a police car after having been under direct surveillance for several hours on suspicion of involvement in drug-smuggling activity. At the time of the stop, the police knew that the defendant matched the detailed description from the United States Customs office of a fugitive from justice, knew that he had registered under a false name at a motel, knew that he had fled drug-smuggling charges in another state, and knew that he had taken evasive action when followed by police. The court did not even address the issue of the significance of the handcuffing, for it assumed that the restraint of the defendant was in fact an arrest and concluded that there was probable cause to arrest the defendant at the time of the stop. Id. at 790-91. In a footnote, the court noted in dictum that in analyzing the issue of the use of force in an in-

vestigative stop, the inquiry is reasonableness. Id. at 790 n.4. It is apparent, therefore, that the holding and statements of the court in Kaperman are in no way inconsistent with the decision below.

The same conclusion must be drawn in reference to the state court cases alleged by the Petitioner to be in conflict. People v. Weeams, 665 P.2d 619 (Colo. 1983) is representative of the cases cited by the Petitioner. In Weeams, the Colorado Supreme Court upheld the use of handcuffs in an investigative stop of two men who matched the description of men who had just committed two armed robberies, killing one victim. Noting that "[t]he critical inquiry is whether the officers' actions were reasonable under the circumstances," the court concluded that "the extended intrusion under the narrow circumstances of this case" was justified since "it was not

unreasonable to handcuff the defendants to ensure the safety of the officers." Id. at 622 (emphasis added). Of course, the factors present in Weeams which justified the handcuffing were absent in the present case, so the Colorado decision cannot be viewed as being in conflict with the decision below. See also Tillman v. State, 275 Ark. 275, 630 S.W.2d 5 (1982), cert. denied, 459 U.S. 1201 (1983) (issue before court was whether facts justified initial stop; issue of whether handcuffing turned stop into arrest was not discussed by court); Howard v. State, 664 P.2d 603 (Alaska App. 1983) (handcuffing of two armed suspects was proportional to the risk involved because investigative stop took place in heavily wooded area where police could not see possible accomplices, and suspects were thought to have committed serious crime of violence and armed robbery); State v. Aguirre, 130 Ariz. App.

54, 633 P.2d 1047 (1981) (handcuffing permitted because suspect had acted evasively and appeared to be trying to escape); People v. Brown, 169 Cal. App. 3d 159, 215 Cal. Rptr. 101 (1985) (upheld validity of handcuffing of bank robbery suspect, who had been seen running full speed in street clothes from bank and who resisted attempts by officer to check for weapons); State v. Goodson, 444 So. 2d 1337 (La. Ct. App. 1984) (handcuffing of armed rape suspect who fled from police despite numerous demands to stop held reasonable; court actually found that probable cause to arrest existed at time of handcuffing); Farrow v. State, 68 Md. App. 519, 514 A.2d 35 (1986) (court upheld handcuffing of persons suspected of having committed one armed robbery and suspected of being in the process of committing another); State v. Wakely, 29 Wash. App. 238, 628 P.2d 835 (1981) (police who were responding to

report of gunshots were entitled to handcuff suspects who had come from that area and had been seen to have been involved in furtive activity).

These case summaries indicate that the Petitioner has fabricated its claimed conflict in the courts, and that in fact the courts have weighed the nature of the crime involved as well as the circumstances of the particular investigative stop in determining the validity of an intrusive method of detention such as handcuffing. Merely because the facts in this case did not demonstrate any necessity or requirement that Floyd be handcuffed does not mean that the decision of the Mississippi Supreme Court is in conflict with the decisions of other courts in cases which involved compelling justifications for handcuffing a suspect.

CONCLUSION

For the foregoing reasons, the Respondent requests this Court to deny the Petitioner's Petition for Writ of Certiorari to the Supreme Court of Mississippi.

Respectfully submitted,

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